

Badrulshah bin Daud v Leonard Nathan & Ors

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2–23–66 OF
2007

ZABARIAH MOHD YUSOF JC

5 JUNE 2009

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Civil Procedure — Striking out — Application to strike out action — Defamation action — Whether plaintiff's action failed to satisfy procedural requirements in O 78 r 2 of the Rules of the High Court 1980 — Whether plaintiff had locus to maintain action — Whether statement of claim disclosed reasonable cause of action

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Tort — Defamation — Letter by association addressed to plaintiff — Whether contents of letter defamatory — Whether plaintiff had reasonable cause of action against defendants

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The plaintiff was a committee member of an association called the Puncak Damansara Owners and Residents Association ('the association') while the eleven defendants were at all material times the president, the vice-president, the secretary, the assistant secretary, treasurer and the executive committee members respectively of the association. It was the plaintiff's case that a letter dated 23 October 2006 ('the letter') written and signed by the first and second defendants, on behalf of all the defendants, contained alleged defamatory remarks of the plaintiff's conduct. In support of his case the plaintiff reproduced excerpts of the said letter in his statement of claim. This was the defendants' application to strike out the plaintiff's claim on the grounds that it was frivolous, vexatious and under the inherent jurisdiction of the court. The defendants submitted, inter alia, that the plaintiff's defamation suit failed to satisfy the procedural requirements in O 78 r 2 of the Rules of the High Court 1980 ('RHC') in that it did not contain an endorsement with a statement giving sufficient particulars of the publications in respect of which the action was brought; that since the plaintiff was no longer a member of the association at the time of filing his defamation action he had no locus to maintain the action; that he had no proof to substantiate his claim; and that the writ and statement of claim did not disclose a reasonable cause of action.

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Held, allowing the application with costs:

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- (1) The fact that the plaintiff failed to comply with O 78 r 2 of the RHC was alone sufficient for the plaintiff's claim to be struck off (see paras 8–9).

- A (2) It did not matter whether the plaintiff was still a member of the association or not to qualify to bring this action against the defendants, as the case was for alleged defamatory marks contained in a letter (see para 10).
- B (3) A plain reading of the excerpts of the letter that contained the alleged defamatory remarks as reproduced in the statement of claim did not show what the letter was meant to be because the first three paragraphs of the original letter were left out. However, upon reading the whole letter, which was reproduced in the defendants' affidavit, it was found
- C that contents of the letter did not put the plaintiff into ridicule or contempt or render him low in the minds of right thinking members of society. Since the words in the letter were not defamatory of the plaintiff it was not necessary to consider the merits of the other ingredients. The plaintiff did not have a cause of action against the defendants (see paras
- D 12–14).

[Bahasa Malaysia summary]

- E Plaintiff ialah seorang ahli jawatankuasa Persatuan Pemilik dan Residen Puncak Damansara ('persatuan tersebut') manakala sebelas defendan, pada semua masa material merupakan presiden, naib presiden, setiausaha, penolong setiausaha, bendahari dan ahli-ahli jawatankuasa eksekutif persatuan tersebut. Menjadi kes plaintiff bahawa sepucuk surat bertarikh 23
- F Oktober 2006 ('surat tersebut') ditulis dan ditandatangani oleh defendan pertama dan kedua, bagi pihak kesemua defendan yang lain, mengandungi kenyataan-kenyataan yang dikatakan fitnah mengenai kelakuan plaintiff. Dalam menyokong kesnya plaintiff menyalin semula petikan surat tersebut dalam pernyataan tuntutan. Ini adalah permohonan defendan-defendan untuk membatalkan tuntutan plaintiff atas alasan ianya adalah remeh,
- G menyusahkan dan di bawah bidang kuasa sedia ada mahkamah. Defendan-defendan menghujahkan, antara lain, bahawa saman fitnah plaintiff gagal untuk memenuhi tata syarat prosedur dalam A 78 k 2 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dalam mana ianya tidak mengandungi pengendorsan mengenai kenyataan yang memberi butir-butir mencukupi
- H berkenaan penerbitan dalam hal di mana tindakan telah dibawa; bahawa memandangkan plaintiff bukan lagi anggota persatuan pada masa pemfailan tindakan fitnahnya dia tidak mempunyai locus untuk meneruskan tindakan ini; bahawa dia tidak mempunyai bukti untuk mengesahkan tuntutan; dan writ dan pernyataan tuntutan itu tidak mendedahkan satu kausa
- I tindakan yang munasabah.

Diputuskan, membenarkan permohonan dengan kos:

- (1) Fakta bahawa plaintiff gagal mematuhi A 78 k 2 KMT sahaja sudah mencukupi bagi membatalkan tuntutan plaintiff (lihat perenggan 8–9).

- (2) Tidak menjadi hal sama ada plaintif masih merupakan anggota persatuan atau tidak bagi melayakkannya untuk membawa tindakan ini menentang defendan-defendan, kerana kes ini adalah bagi penyataan yang dikatakan fitnah yang terkandung dalam sepucuk surat (lihat perenggan 10). A
- (3) Pembacaan biasa ke atas petikan surat yang mengandungi penyataan yang dikatakan fitnah seperti yang disalin semula dalam pernyataan tuntutan tidak menunjukkan maksud surat tersebut sebab tiga perenggan pertama surat asal ditinggalkan. Bagaimanapun, apabila membaca keseluruhan surat tersebut, yang disalin semula dalam affidavit defendan-defendan, didapati kandungan surat tersebut tidak mencemuh atau menghina plaintif atau merendah-rendahkan plaintif dalam fikiran ahli masyarakat yang berfikiran waras. Oleh sebab ayat-ayat dalam surat itu tidak memfitnah plaintif maka tidak perlu untuk menimbangkan merit unsur-unsur yang lain. Plaintif tidak mempunyai satu kausa tindakan terhadap defendan-defendan (lihat perenggan 12–14).] B
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Notes

For cases on application to strike out action, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 6696–6702. E

For cases on defamation in general, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 259–623.

Legislation referred to

Rules of the High Court 1980 O 78 rr 2, 3 F

Mohamad Rhiza Ghazi (Rhiza & Richard) for the plaintiff.
P Selvaraj (Raj & Co) for the defendants.

Zabariah Mohd Yusof JC:

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[1] This is an application by the defendants ie:

- (a) vide encl 21 — the first to the fourth defendants and the eleventh defendant; H
- (b) vide encl 23 — the fifth, eighth, ninth and twelfth defendants;
- (c) vide encl 25 — the third defendant, the sixth defendant and the seventh defendant; I

to strike out the plaintiff's writ and statement of claim on grounds that it is frivolous, vexatious and under the inherent jurisdiction of the court. I

- A allowed the application in encl 21 with costs. Parties have agreed that the decision in encl 21 would bind the decisions in encls 23 and 25. The plaintiff appealed against the decision.

BACKGROUND FACTS

- B [2] The plaintiff was a committee member of an association called Puncak Damansara Owners & Residents Association ('association').
- C [3] The defendants are the president, deputy president, vice president II, secretary, assistant secretary, treasurer, and the executive committee of the said association.
- D [4] The first and second defendants are sued on behalf of themselves and in their capacity as members of the committee of the said association. Whereas the third till the twelfth defendants are sued in their capacity as members of the committee of the said association.
- E [5] By a letter dated 23 October 2006, written and signed by the first and second defendants (on behalf of all the defendants) and addressed and sent through AR registered post to the plaintiff, the defendants wrote and published serious allegations of the plaintiff in relation to his conduct therein (the letter).
- F [6] Below are the alleged defamatory letter which the plaintiff's claim is premised upon:
- G ... The Developer i.e. Puncakdana Development Sdn Bhd and the Property Management Company i.e. Khong & Jaafar Sdn Bhd, have also informed the Association that they view this matter with seriousness and that they do not condone such doing by your goodself.
- H In fact, they as lawful Proprietors of this complex parcel and as a company contracted to manage the complex parcel, have informed us that they will not hesitate to lodge a police report against you under the Seditious Act (di bawah Akta Hasutan) for bring disharmony and disunity to the peaceful living environment of ail those who are residing in Pangsapuri Puncak Damansara.
- I Please be further advised that PUNDORA will also not hesitate to lodge a police report against you for acting in a manner unbecoming of a member of the Association and whose conduct in the opinion of the Executive Committee is detrimental to the interest and well being of the Association; acting in a manner to bring disharmony and disrepute upon the Association or its Members;

subverting or undermining the objectives of the Association and by your words or actions prove to be prejudicial to the unity and better relationship between the Members and the Association.

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... Finally but not the least, PUNDORA would like to know what are your actual intentions and personal agenda in pursuing your cause in all these matters, which is considered unproductive and a sheer waste of time, which at the end of the day, does not bring any benefit at all to you; neither to the Association, to its Exco, to its Ordinary Members and to all the owners and Residents of Pangsapuri Puncak Damansara.

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We, the Association, would appreciate however, if you could kindly make known your true intentions, whether it is for your own self-motivated interest and propaganda or is it purely for the benefit and welfare of all the owners and residents of Pangsapuri Puncak Damansara, which you claim to be championing for?

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[7] The issues that were raised by the plaintiff:

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- (a) the pleadings failed to satisfy firstly, the procedural rules (O 78 r 2 of the Rules of the High Court 1980) in respect of defamation suits and in respect of the endorsement and secondly, failed to satisfy the requirement of O 78 r 3 of the RHC;
- (b) the plaintiff has no locus to maintain the action herein as at the time of filing of this writ he was no longer a member of the said association;
- (c) the plaintiff has no proof to substantiate his claim and his allegations are baseless; and
- (d) the writ and statement of claim does not disclose a reasonable cause of action.

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THE COURT'S FINDINGS

First issue: failure to comply with the requirement of O 78 r 2 of the RHC

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[8] Order 78 r 2 of the RHC states that:

Before a writ in an action for libel is issued *it must be endorsed* with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

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[9] Thus on this alone, the claim by the plaintiff can be struck off.

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A *Second issue: plaintiff has no locus to maintain the action*

B [10] I disagree with the defendants' contention that the fact that the plaintiff was not a member of the association at the time of filing of this writ does not give him the locus to bring this action. It does not matter whether the plaintiff is still a member of the association to qualify to bring this action against the defendants, as the case is for the alleged defamatory remarks contained in a letter. Thus, this is a non issue.

C *Third and fourth issues*

(a) *The plaintiff has no proof to substantiate his claim and his allegations are baseless*

D (b) *The writ and statement of claim does not disclose a reasonable cause of action*

[11] For these issues, the court needs to determine in a defamation action:

(a) whether the words are defamatory;

E (b) whether the words refers to the plaintiff; and

(c) whether there was publication.

Whether the words are defamatory

F [12] A plain reading of the excerpts of the letter as reproduced in para 18 of the statement of claim does not show what the letter is meant to be. That is not surprising, as the first three paragraphs of the original letter was left out by the plaintiff when he reproduced the letter in the statement of claim. The full version of the original letter has been reproduced in exh 'LN7' of the defendants' affidavit in encl 21.

G [13] Therefore upon reading the whole letter in exh LN7, I do not find from the contents imputations that would put the plaintiff into ridicule or contempt or render him low in the mind of the right thinking society. This letter was written (after the first defendant have received numerous complaints/grievances from Exco members and residents of the apartments) as an advise to the plaintiff to stop distributing leaflets, petitions in the letter boxes of the residents or under the door of residents of the apartments, as this is considered a sheer waste of time.

I [14] Since the words are not defamatory of the plaintiff, I will not go into the merits of the other ingredients. The plaintiff does not have a cause of

action against all the defendants, with that I allowed the application in
encl 21 with costs.

Application allowed with costs.

Reported by Kohila Nesan

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